IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1069/2005

(Firm Baghala Bros. Vs. Maniram)

Date of Order : 06/09/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. N.L.Joshi for the petitioner.
Mr. M.K.Garg for the non-petitioner.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 23.3.2005 passed by Judicial Magistrate, Anoopgarh, district Sri Ganganagar (for short 'the trial court' hereinafter), whereby the trial court allowed the application filed by the accused non-petitioner under Section 91 Cr.P.C. and directed the complainant to produce the books of accounts relating to the account of the accused non-petitioner for the years 1999 to 2001. Aggrieved by the order impugned, the petitioner has filed the instant criminal misc. petition.

I have heard learned counsel for the parties.

It is contended by learned counsel for the petitioner

that since the issuance of cheque has not been disputed by the accused non-petitioner, therefore, the accused non-petitioner is under legal liability to pay the cheque amount and on failure he is liable for the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter). Learned counsel has relied on a decision of this Court in Girdhari Lal Vs. 2005 (1) Cri. L.R. 335 wherein the application seeking recalling of complainant by the accused under Section 311 Cr.P.C., was dismissed by the trial court, against which, a revision petition was filed before this Court. While dismissing the revision petition, this Court held that the complainant has made the statement and if there is any deficiency in his statement, it is not for the accused-respondent to make up such deficiency. So far as books of account of the complainant-petitioner is concerned, the accused-non-petitioner has not set up his case that he had any dealing with the complainant's commission agency. The case as set up is against one Bhoj Raj with whom he has trading transaction as commission agency.

The judgment relied on by learned counsel for the petitioner has no application to the facts and circumstances of the present case for the reason that in the instant case the petitioner has categorically admitted in his statement that the non-petitioner had a Aadhat with him and non-petitioner has been taking the amount and returning the same after selling his

crops which has been recorded in his books of accounts. In the statement, the petitioner categorically came with a case that the cheque in question was issued to discharge the balance amount of Aadhat maintained by petitioner.

Section 138 of the Act clearly provides that where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, or any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may be extended to two years or with fine which may extend to twice the amount of cheque, or with both. The explanation to Section 138 of the Act provides that for the purpose of this Section, "debt or other liability" means a legally enforceable debt or other liability. Thus, the cheque in question is issued for the discharge, in whole or in part, of any debt or other liability legally enforceable.

So far as, the issuance of cheque is concerned, the presumption under Section 139 of the Act is to be drawn.

However, the presumption is rebuttable and onus is on the accused to establish that the cheque was not issued for discharge of debt or other liability legally enforceable. In the circumstances, therefore, in my view, when the complainant came with a case that the cheque in question was for the discharge of liability of Aadhat maintained in his books of account, then it is for the accused to rebut that the cheque in question was not for the discharge of any debt or other liability legally enforceable. Considering this fact, the trial court allowed the application. In my view, it cannot be said that the order impugned would result in serious miscarriage of justice. The matter is at the stage of defence evidence and in defence if the accused non-petitioner wants to establish that the debt or other liability was not legally enforceable, then he must be allowed to lead evidence.

The petition has no force and is therefore, dismissed. Stay petition also stands dismissed.

(H.R.PANWAR),J.

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